

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

SELIM ZHERKA,

Plaintiff,

-against-

MICHAEL F. BOGDANOS, individually,  
MICHAEL R. EDELMAN, a/k/a "THE  
CONSULTANT", individually, PHILIP  
AMICONE, individually and in his capacity as  
Mayor of the City of Yonkers, New York, DAVID  
"DOE" a/k/a/ "ETHAN EDWARDS",  
individually, EDMOND ROE a/k/a "MOB  
BUSTER", individually, JOHN POE, individually,  
WILLIAM ROE, individually, and JANET DOE,  
individually,

Defendants.

**ECF Case**

**08 Civ. 2062 (CLB)(GAY)**

**REPLY TO COUNTERCLAIMS**

PHILIP AMICONE,

Third-Party Plaintiff,

-against-

THE GUARDIAN NEWS, INC. and RICHARD  
BLASSBERG,

Third-Party Defendants.

Defendant and Third-Party Plaintiff Philip Amicone ("Amicone"), by and through his attorneys DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, as and for his Reply to the Counterclaims raised by Third-Party Defendants The Guardian News, Inc. and Richard Blassberg ("Third Party Defendants") in their Third Party Answer (the "Answer"), alleges as follows:

1. Amicone denies each and every allegation contained in paragraphs numbered 1-10 of the Answer and respectfully refers all questions of law to the Court for judicial determination.

**AS AND FOR A REPLY TO THE FIRST COUNTERCLAIM**

2. Amicone denies each and every allegation contained in paragraph numbered 11 of Third Party Defendants' Counterclaim.

3. Amicone denies each and every allegation contained in paragraph numbered 12 of Third Party Defendants' Counterclaim and respectfully refers all questions of law to the Court for judicial determination.

**AS AND FOR A REPLY TO THE SECOND COUNTERCLAIM**

4. Amicone denies each and every allegation contained in paragraph numbered 13 of Answer.

5. Amicone denies each and every allegation contained in paragraph numbered 14 of Third Party Defendants' Counterclaim and respectfully refers all questions of law to the Court for judicial determination.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

6. Amicone's counterclaims do not violate Third Party Defendants' rights under the First Amendment to the United States Constitution.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

7. Amicone's claims are not unlawful by reason of the alleged failure to obtain authorization by the City Council of the City of Yonkers to expend public moneys.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

8. Payment by the City of Yonkers for legal services in this case does not constitute an unlawful gift of public moneys in violation of the New York State Constitution.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

9. Amicone's claims comply with CPLR 3016(a) of the New York State Civil Practice Law and Rules.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

10. Statements made by Third Party Defendants do not constitute speech protected by the First Amendment of the Constitution and are actionable for damages.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

11. The statements made by Third Party Defendants are not protected by any privilege cognizable under federal or state law.

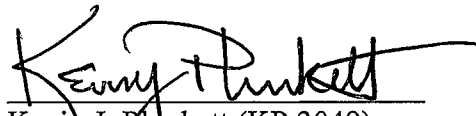
**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

12. Third Party Defendants' counterclaims fail to state a claim upon which relief can be granted.

Dated: White Plains, New York  
June 10, 2008

DELBELLO DONNELLAN WEINGARTEN  
WISE & WIEDERKEHR, LLP

By:



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